

after the date of export of the eligible commodity, if the exporter has chosen performance security “Option A,” or within 60 days after the entry of the eligible commodity into the eligible country, if the exporter has chosen performance security “Option B”, CCC may, upon issuing the certificate(s), discount the certificate(s) in an amount determined appropriate by CCC to compensate it for costs which may be incurred by CCC as a result of the exporter’s delay.

§ 1494.801 Enforcement and termination of agreements with CCC.

(a) *Performance in accordance with an Agreement with CCC.* (1) An exporter which enters into an Agreement with CCC must ensure that the eligible commodity is exported from the U.S. and enters the eligible country in accordance with the terms and conditions of the Agreement.

(2) The diversion of the eligible commodity to a country other than the eligible country is prohibited. Transshipments of the eligible commodity are permitted only if specifically allowed in the applicable Invitation or for shipment through a Canadian transshipment port on the St. Lawrence River if the eligible commodity had been shipped from the United States via the Great Lakes coastal range and its identity had been preserved until shipped from Canada.

(3) Regardless of whether or not a bonus has been paid by CCC to the exporter pursuant to § 1494.701, the bonus is not earned by the exporter until the eligible commodity enters into the eligible country in accordance with the Agreement. In order to retain a bonus or request payment of a bonus, depending upon the option chosen for furnishing performance security, and to request cancellation of the performance security, the exporter must provide evidence to CCC, as specified in § 1494.401(f)(2), that the eligible commodity entered into the eligible country. If, on the basis of evidence available to it, CCC determines that there was destruction, diversion or loss of the eligible commodity prior to entry into the eligible country, CCC will not release the amount of performance security corresponding to the amount of

eligible commodity for which insufficient evidence of entry into the eligible country was presented to CCC until:

(i) CCC recovers from the exporter the amount of the bonus corresponding to such amount of the eligible commodity, if the exporter has already been paid the bonus under performance security “Option A”; and

(ii) The requirements of either § 1494.401(f)(1)(ii) or § 1494.401(f)(1)(iii) have been met.

(4) The failure of an exporter to perform in full and to fulfill all of its obligations under the Agreement will constitute a breach of the Agreement. An exporter which breaches the Agreement may be required to forfeit its right to receive or retain part or all of the bonus authorized or paid under the Agreement and may also be liable to CCC for damages. Examples of an exporter’s failure to perform under the Agreement include, but are not limited to, the following:

(i) The exporter does not ship all of the required amount of the eligible commodity in accordance with the delivery period stated in the Agreement;

(ii) The exporter exports an amount of the eligible commodity that is inconsistent with the quality specifications in the Agreement;

(iii) The exporter is unable to provide a certification that all of the eligible commodity exported pursuant to the Agreement was entered into the eligible country;

(iv) The eligible commodity is transshipped through any country, other than Canada, unless specifically allowed in the applicable Invitation; or

(v) The eligible commodity is transshipped through Canada without having its identity preserved.

(5) If the eligible commodity is to be delivered to the eligible buyer in multiple shipments, CCC may decide to consider the shipments separately in determining whether the exporter has failed to perform under the Agreement.

(b) *Return of bonus.* An exporter that fails to fulfill all of its obligations under the Agreement shall be in default. If an exporter that has already been paid the bonus value defaults, CCC shall have the right to recover the bonus value paid for the quantity of the eligible commodity with respect to

which the exporter failed to perform under the Agreement.

(1) If CCC has paid this bonus value in the form of a CCC Certificate(s), the exporter shall pay to CCC the higher of:

(i) The dollar value of the CCC Certificate(s);

(ii) The dollar amount received for the CCC Certificate(s) if the CCC Certificate(s) was transferred to another party; or

(iii) The dollar amount of the proceeds from the sale of the CCC-owned commodities exchanged for the CCC Certificate(s) if the commodities were sold to another party.

(2) If CCC has paid this bonus value in some other form, as specified in the applicable Invitation, the exporter shall pay to CCC the dollar and cents amount or equivalent of the bonus value paid to the exporter.

(c) *Liability for liquidated damages.* The exporter's failure to perform under the Agreement will cause serious and substantial losses to CCC, such as damages to the EEP and CCC's domestic price support program, storage charges, and administrative and other costs incurred. If the exporter breaches the Agreement, the exporter will be liable to pay to CCC as liquidated damages an amount obtained by applying the method or rate for determining damages specified in the applicable Invitation to the quantity of the eligible commodity with respect to which the exporter failed to perform under such Agreement. In submitting an offer in response to an Invitation issued under this subpart, the exporter agrees that such liquidated damages are reasonable estimates of the probable actual damages which may be incurred by CCC.

(d) *Decision to hold the exporter harmless for liquidated damages.* CCC will hold an exporter harmless for the payment of liquidated damages if:

(1) The exporter's failure to perform under the Agreement was due to causes solely without the exporter's fault or negligence and the exporter had taken the necessary action to enable it to export the required quantity of the eligible commodity and enter it into the eligible country; or

(2) The eligible commodity was lost or destroyed after it had been placed aboard the export carrier.

In making the decision whether to hold an exporter harmless pursuant to this paragraph, CCC may consider any information available to CCC, including any information provided to it by the exporter.

(e) *Fraud, scheme or device.* Notwithstanding any other provision of law, CCC may take action to recover any bonus paid or to hold the exporter liable for the payment of damages caused to CCC if the exporter engages in fraud with respect to the EEP, or adopts or participates in adopting a scheme or device which is designed to evade this subpart or which has the effect of evading this subpart. Such acts shall include, but are not limited to:

(1) Concealing information which is required by this subpart; or

(2) Submitting information which is known by the exporter to be false or erroneous.

(f) *CCC's right to recover amounts due CCC by exporters.* If the exporter breaches its obligations under the Agreement and becomes liable to CCC for repayment of the bonus value or for liquidated or other damages, CCC reserves the right to recover such amounts due CCC by making a claim against the performance security furnished to CCC, as described under § 1494.401, or by taking any other measures available to CCC as a result of this subpart or any laws or regulations, including debt settlement regulations, applicable to CCC.

(g) *Shipping tolerances.* If the exporter exports and enters into the eligible country, in accordance with the requirements of the Agreement, a quantity of the eligible commodity which is less than the quantity specified in § 1494.501(c)(7) but not less than such quantity minus 5 percent, the exporter shall not be required to pay liquidated damages for failure to perform under the Agreement for the quantity which failed to be exported and entered into the eligible country. If an exporter exports and enters into the eligible country, in accordance with the requirements of the Agreement, a quantity of the eligible commodity which is greater than the quantity specified in

§ 1494.501(c)(7), the exporter may request payment of the bonus value based upon the actual quantity, on a net weight basis, exported and entered into the eligible country, but not greater than the quantity specified in § 1494.501(c)(7), plus 5 percent.

(h) *Termination of agreements.* (1) CCC may, by written notice to the exporter, terminate an Agreement, in whole or in part, as a result of:

- (i) the failure of the exporter to carry out any provisions of the Agreement;
- (ii) the failure of the exporter to maintain a business office in the U.S.;
- (iii) the failure of the exporter to maintain an agent in the U.S. for service of process; or
- (iv) the suspension or debarment of the exporter from participation in CCC or other U.S. Government programs.

If an Agreement is terminated by CCC pursuant to this subparagraph, CCC will not compensate the exporter for any costs incurred by the exporter. The exporter will be liable to CCC for any funds owed to CCC for the repayment of any bonus already paid and may be liable to CCC for liquidated or other damages suffered by CCC. If CCC intends to hold the exporter liable for liquidated damages, and it has not already so notified the exporter prior to the termination of the Agreement, CCC will generally do so at the time that it notifies the exporter of the termination of the Agreement.

(2) CCC may, by written notice to the exporter, terminate an Agreement, in whole or in part, if CCC determines it to be in the best interest of CCC. If an agreement is so terminated, the exporter will be compensated for reasonable losses, as determined by CCC, resulting from such termination. These losses will not include lost profits and will not exceed the bonus value under the Agreement.

(i) *Amendment of agreements.* (1) CCC will have the authority to amend an Agreement, either before or after such Agreement has been breached by the exporter, if the exporter requests that the Agreement be amended and CCC determines that such amendment would serve the best interests of the EEP. The exporter may be required to submit documentary evidence to CCC to demonstrate that it is making progress

toward fulfilling the Agreement before CCC will consider amending the Agreement. All requests for amendments submitted by exporters, and all amendments made by CCC to an Agreement, under this subpart shall be in writing.

(2) Prior to amending an Agreement with the exporter, CCC will consider whether the amendment to the Agreement should include a reduction in the CCC bonus or a modification of the sales price. If CCC determines that the CCC bonus and the sales price are still acceptable, it may amend the Agreement to incorporate the exporter's requested change, while maintaining the current CCC bonus and sales price, provided that the amendment would otherwise serve the best interests of the EEP. If CCC determines that the CCC bonus and/or the sales price are no longer acceptable, due to changes in market or other conditions, it will so inform the exporter. If the exporter still requests that the Agreement be amended, CCC and the exporter will enter into discussions in an attempt to arrive at a new CCC bonus and/or sales price which would be acceptable to CCC. If these discussions are successful, then CCC may amend the Agreement to incorporate the exporter's requested change as well as the new CCC bonus and/or sales price, provided that the amendment would otherwise serve the best interests of the EEP. If these discussions are unsuccessful, then the Agreement will not be amended and the exporter will be considered to be in breach of the Agreement if it fails to perform under the terms of the Agreement.

(j) *Amendments to sales contracts.* In the event of an amendment to the sales contract between the exporter and the eligible buyer or a change in the delivery schedule, CCC will determine whether the amendment or change would constitute a breach of the Agreement. If CCC determines that the amendment or change would constitute a breach of the Agreement, CCC may terminate the Agreement. In the alternative, if CCC determines that a continuation of the Agreement would serve the best interests of the EEP, and if the exporter requests an amendment, CCC may amend the Agreement to take into account the amendment to the

sales contract or change in delivery schedule. An amendment to an Agreement will be in accordance with paragraph (i)(1) of this section. CCC will promptly advise the exporter of its determination in writing by letter, facsimile, or telex.

§ 1494.901 Dispute resolution and appeals.

(a) *Dispute resolution.* (1) The Director of the CCC Operations Division (Director, CCCOD) and the exporter will attempt to resolve any disputes, including any adverse determinations made by CCC, arising under the EEP, this subpart, the applicable Invitation, or the Agreement.

(2) The exporter may seek reconsideration of a determination by the Director, CCCOD relating to the Agreement by submitting a letter requesting reconsideration to the Director, CCCOD, within 30 days of the date of the determination. For the purposes of this section, the date of a determination will be the date of the letter or other means of notification to the exporter of the determination. The exporter may include with the letter requesting reconsideration any additional information which it wishes the Director, CCCOD, to consider in reviewing its request. The Director, CCCOD, will respond to the request for reconsideration within 30 days of the date on which the request or the final documentary evidence submitted by the exporter is received by him, whichever is later, unless the GSM extends the time permitted for response. If the exporter fails to request reconsideration of a determination by the Director, CCCOD, that the exporter owes any funds to CCC under the Agreement, then such funds will become a debt of the exporter to CCC at the expiration of the 30-day period for submitting such a request.

(3) If the exporter requested a reconsideration of a determination by the Director, CCCOD, pursuant to subparagraph (a)(2) of this section, and the Director, CCCOD, upheld the original determination, then the exporter may appeal the determination to the GSM in accordance with the procedures set forth in paragraph (b) of this section. If the exporter fails to appeal the deter-

mination to the GSM, then any funds owed to CCC will become a debt of the exporter to CCC at the expiration of the 30-day period for submitting an appeal to the GSM.

(b) *Appeal procedures.* (1) An exporter which has exhausted the procedures set forth in paragraph (a) of this section may appeal to the GSM a determination of the Director, CCCOD, relating to the Agreement between the exporter and CCC. An appeal to the GSM must be in writing and filed with the office of the GSM no later than 30 days following the date of the final determination by the Director, CCCOD. In this appeal to the GSM, the exporter shall be entitled to an administrative hearing before the GSM, if the exporter indicates in its appeal letter that it desires such a hearing.

(2) If the exporter does not desire an administrative hearing, the exporter may submit any additional written information or documentation which it desires the GSM to consider in acting upon its appeal. This information or documentation may be submitted to the GSM up until the time that a decision is made by the GSM. The GSM will base the determination upon information contained in the administrative record. The GSM will endeavor to make a decision on an appeal not involving a hearing within 60 days of the date on which the GSM receives the appeal or the date that final documentary evidence is submitted by the exporter to the GSM, whichever is later.

(3) If the exporter has indicated that it desires an administrative hearing, the GSM will set a date and time for the hearing which is mutually convenient for the GSM and the exporter. This date will ordinarily be within 60 days of the date on which the GSM receives the request for hearing. The hearing will be an informal procedure. The exporter and/or its counsel may present any administrative or documentary evidence to the GSM which it desires to have the GSM consider in making a determination. A transcript of the hearing will not ordinarily be prepared unless the exporter bears the costs involved in preparing the transcript, although the GSM may arrange